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Ontario

Ministry of  
Municipal Affairs  
and Housing

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# PRIVATE ROADS

## PLANNING GUIDELINES FOR MUNICIPALITIES

Operations Review Section  
Operations Control Branch  
56 Wellesley Street, West  
Toronto, Ontario, M7A 2K4  
Telephone: 965-6418





# PRIVATE ROADS

## PLANNING GUIDELINES FOR MUNICIPALITIES




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Ministry of  
Municipal Affairs  
and Housing

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Hon. Claude F. Bennett, Minister  
R.M. Dillon, Deputy Minister

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## 1.0 INTRODUCTION

Recently there has been increased interest in development with road access other than publicly owned and/or maintained roads.

There are many potential local and provincial problems where private roads provide access to development. Accordingly, the ministry discourages any development on existing and new private roads in the absence of

- . a comprehensive study of the planning, financial and legal implications for the municipality, and
- . approved official plan policies on this type of access based on that comprehensive study.

These guidelines are intended to help municipalities develop a position on private road development by identifying potential private road problems and the kind of information that should be collected and examined for the municipal study.

For the purposes of these guidelines, a private road is any road not available for use by the general public since it is privately owned and maintained. This means any road not publicly owned and/or maintained.

Contact with the ministry's Community Planning Advisory Branch and Community Planning Review Branch before the study begins is highly recommended. Early discussion with these branches will confirm the specific information needed for the study based on local circumstances. These discussions can save a municipality from unnecessary work and expense in their study by tailoring the research required to local information sources and conditions. The completed study should also be discussed with these branches to resolve any ministry concerns before planning changes are made. Funding for the review may be available through the Community Planning Advisory Branch.

Most of the information needed for the study should exist in municipal records and can be used effectively by local staff. Useful sources include existing land use maps, building permit records, assessment rolls and the knowledge of the roads superintendent and solicitor.

## **2.0 PRIVATE ROADS PROBLEMS**

### **2.1 Financial**

Property owners on private roads may pressure the municipality to accept ownership of their roads and to maintain them. This way, they will achieve the same standard of road service as public road residents. There may be many reasons for this:

- . private road residents generally are not taxed at any less rate than public road residents even though their road access is less than the standard of a public road,
- . landowners may have encountered administrative and financial problems in arranging adequate private road maintenance,
- . seasonal residents may desire year round access to permit them year round occupancy, and
- . residents may perceive the municipality as a provider of services, including roads.

Where any municipal services are provided on private roads, additional pressure often occurs for the municipality to assume full responsibility for the maintenance of these roads.

Two costs can result from bringing a private road into the public road system. First, the road must be improved to the minimum Ministry of Transportation and Communications standard



if it is going to qualify for their subsidy. Although there is no legal requirement for the municipality to pay for this improvement, pressure can be applied by private road users for the municipality to do this. These road improvement costs, if paid by the municipality, can upset municipal budgeting. Attempts to have private road users pay for the improvements may well be unsuccessful.

Second, once the municipality acknowledges the dedication of a road as public and assumes maintenance responsibilities, there is a continuing local cost, beyond the provincial maintenance subsidy, to maintain the road. All the ratepayers in the municipality pay this unsubsidized maintenance cost as well as the cost of increased public services provided, such as police protection, snow plowing, school busing and garbage collection.

These two costs, if paid by the municipality, may not be offset by increased provincial subsidy and local tax revenue. Some municipalities believe that private road development is less expensive to them. They may find in the long term that this is not so. Some municipalities cannot bear the costs related to accepting the ownership and responsibility for the maintenance of private roads without financial jeopardy.

## 2.2 Legal

The basic legal issue raised by private roads is determining whether roads are in fact public or private.

This issue is important because a municipality may find that general public use of private roads and the provision of any municipal services on these roads forms dedication of the road and municipal acceptance of maintenance responsibilities.

Reviewing the status of privately owned roads and any actions by the owners and municipality which may affect the legal

status of these roads may confirm potential problems of municipal liability. Generally, public roads which have been assumed by the municipality are improved and maintained at public expense. The municipality may be liable for damages caused by lack of maintenance even though it may not have clear title to these roads.

### 2.3 Land Use Planning

Private road problems are described more easily in financial and legal terms rather than in planning terms. However, the planning framework (i.e. official plan and zoning by-law coverage) provides an established way of making a formal municipal position and complementary controls over development on private roads using public input.

Some aspects of private roads do pose land use planning problems. Private roads are largely associated with seasonal residential uses in recreational areas. Demand for municipal ownership and maintenance of these roads is low where the development serviced is, and remains, seasonal. However, conversion to permanent residential use increases demands for higher levels of services, similar to those in other parts of the community. The municipality should anticipate areas of conversion and establish appropriate policies and controls.

Without addressing the land use implications of private roads and developing a corresponding policy, the chances of successfully enforcing a municipal position and controlling the adverse effects of private roads are slim. While an official plan's land use distribution may be sound, without private roads policies the plan would be an incomplete base for municipal action. Once established, these policies can be followed up in a number of ways. Seasonal zoning is one of the planning tools used in trying to control the effects of private roads. While the legal basis for this zoning is sound, the ministry



realizes the difficulties that can be involved in effectively enforcing these by-laws. Further, official plan policies on capital works prohibiting the provision of municipal services on private roads can help municipalities deal with pressure to provide services before the consequences of this are explored. The Planning Act requirement that no public work be undertaken for any purpose not conforming to the official plan lends weight to these policies.

### **3.0 COMPONENTS OF THE COMPREHENSIVE STUDY**

The local study is intended to help the municipality assess its private roads situation and, if necessary, develop an official plan policy to deal with it. The questions which this guideline suggests are designed to show whether any of the problems described earlier exist or could result from the use of private roads as access to development.

Based on the comprehensive study, a municipality may decide not to allow development on private roads at all. Municipalities deciding to allow such development should assess the effectiveness of the controls and determine whether changes are required.

The study should address these three private roads issues:

- . land use planning
- . financial
- . legal

The conclusions of the study should clearly

- . confirm whether there are or may be problems with private roads in the municipality or not

- . identify the nature, extent and effect of those problems
- . indicate the municipal position on private roads based on the findings of the study, and
- . identify alternate official plan policies, zoning approaches and any other relevant regulatory tools needed to implement the municipal position on private roads.

The study should contain answers to the questions set out below unless some of them are clearly not pertinent to the municipality. The study can go beyond these questions if considered useful.

### 3.1 Land Use Planning

- . Are there private roads in the municipality? Where are they? A map showing private and public roads separately should be prepared at a scale allowing measurement of their lengths. What determines the categorizing of a road as private on the map?
- . Choose a representative period for the study (e.g. the last five years).
- . How many seasonal dwellings, permanent dwellings and vacant lots are there on private roads? How many lots used for some other purpose exist on private roads? What percentage of private road frontage is vacant or used for something other than residential use (separate figures)? How many severances have been granted on private roads?
- . How many building permits have been issued in the municipality in the study period? Of this total, how many permits have been issued for lots with private road access? Is the rate of building on lands with private road access increasing?



- . About how many residential units on private roads have been converted from seasonal to permanent use in the study period? Are these conversions concentrated or scattered throughout the municipality?
- . Has the maintenance of any private road(s) been assumed by by-law in the study period? Does the municipality intend to assume by by-law maintenance of any private road(s) in the foreseeable future? Please indicate the approximate length and location on the map prepared. Has the municipality had any requests to assume the maintenance of private road(s) in the study period? What services, if any, does the municipality provide to private road(s) now?
- . Do the municipality's official plan and zoning by-law explicitly address private roads and conversion from seasonal to permanent residential use? If so, how?

Answers to these questions will describe the existing situation regarding private roads. They will also indicate if private road development forms a significant and growing amount of the municipality's growth. Reviewing the existing planning controls together with the trend in private road development will show whether those controls are adequate or should be changed.

### 3.2 Financial

- . What would be the approximate, current cost to bring each private road up to minimum Ministry of Transportation and Communications subsidy standard? How much would the associated costs of surveys, land acquisition, deed preparation and any other costs be?
- . Who would pay these costs if these roads become public and why? If the municipality is going to pay these costs, how

are they going to be recovered? (The ministry's Field Services Branch, whose offices are listed at the end of this publication, are prepared to report the impact of a specific expense on a municipality's financial position. Such reports can be made available to municipalities who request them and can outline the cost associated with a particular work).

- . What would be the anticipated municipal costs per year to maintain a kilometre of road at Ministry of Transportation and Communications subsidy standard?
- . How would the municipality pay for the maintenance costs of the larger of the following:
  - private roads for which the municipality intends to accept dedication and maintenance responsibility in the foreseeable future, or
  - private roads which legally may be found to be public and to have been assumed by the municipality as a result of the provision of municipal services.
- . If the municipality intends to provide services on private roads but not to assume those roads, how would the municipality pay for these services and would any legal problems be created?

### 3.3 Legal

- . Do the actions of private road owners and the municipality create any legal grounds for claims that a private road has become a public road? (In addition to answering this question, the municipal solicitor may have relevant comments on the conclusions of the review).



### 3.4 The Conclusion of the Study

- . Has the study confirmed the existence or potential for any of the problems described earlier? If so, what problem or combination of problems might there be?
- . Based on the findings of the study, what should be the municipal position on private roads as a means of access to development?
- . If the official plan policies, zoning by-laws or other available regulatory means do not ensure that the municipal position can be achieved, what specific changes are required?

The last question of the study is the first step toward developing effective controls recognizing the variety of problems private road access can cause. To help you answer this question the Community Planning Advisory Branch and the Community Planning Review Branch are prepared to discuss the private roads review and possible planning controls. Early and frequent contact with these branches can ensure that the study is done with a minimum of problems and maximum benefit. Municipalities are encouraged to use this resource to assist them.

This study exercise and follow-up can result in reasonable controls over private roads, acceptable to both the municipality and the province.

The Community Planning Advisory Branch has offices at the following locations:

Central Region  
2nd Floor  
47 Sheppard Avenue East  
Willowdale, Ontario M2N 2Z8  
Telephone: (416) 224-7635  
Zenith 52650

South East Region  
3rd Floor  
244 Rideau Street  
Ottawa, Ontario K1N 5Y3  
Telephone: (613) 566-3801  
Zenith 52650

North East Region  
1191 Lansing Avenue  
Sudbury, Ontario P3A 4C4  
Telephone: (705) 560-0120  
Toll free 1-800-461-1193

North West Region  
435 James Street South  
Thunder Bay, Ontario P7C 5G6  
Telephone: (807) 475-1651  
Zenith 52650

South West Region  
7th Floor  
495 Richmond Street  
London, Ontario N6A 5A9  
Telephone: (519) 673-1611  
Toll free 1-800-265-4736

The Community Planning Review Branches have offices at the following locations:

Community Planning Review Branch  
North and East  
7th Floor  
56 Wellesley Street West  
Toronto, Ontario M7A 2K4  
Telephone: (416) 965-6418

Community Planning Review Branch  
Central and Southwest  
8th Floor  
56 Wellesley Street West  
Toronto, Ontario M7A 2K4  
Telephone: (416) 965-6418



The Field Services Branch of the ministry, which can report on the impact of a specific expense on a municipality's financial position, has offices at the following locations:

Cambridge Office  
150 Main Street  
Cambridge, Ontario N1R 6P6  
Telephone: (519) 622-1500

Guelph Office  
147 Wyndham Street North  
Guelph, Ontario N1H 4E9  
Telephone: (519) 836-2531

Kingston Office  
1035 Princess Street  
Kingston, Ontario K7L 5T3  
Telephone: (613) 547-2203

London Office  
7th Floor  
495 Richmond Street  
London, Ontario N6A 5A9  
Telephone: (519) 438-7255

North Bay Office  
347 Sherbrooke Street  
North Bay, Ontario P1B 2C1  
Telephone: (705) 476-4300

Orillia Office  
15B Matchedash Street North  
Orillia, Ontario L3V 4T4  
Telephone: (705) 325-6144

Oshawa Office  
2nd Floor  
74 Simcoe Street South  
Oshawa, Ontario L1H 4G6  
Telephone: (416) 571-1515

Ottawa Office  
244 Rideau Street  
Ottawa, Ontario K1N 5T3  
Telephone: (613) 566-3711

Sudbury Office  
430 Notre Dame Avenue  
Sudbury, Ontario P3E 5K7  
Telephone: (705) 675-4343

Thunder Bay Office  
P.O. Box 5000  
435 James Street South  
Thunder Bay, Ontario P7C 5G6  
Telephone: (807) 475-1621











